

In The OFFICE OF THE CLERK  
Supreme Court of the United States

OAKLAND CITY UNIVERSITY,  
founded by GENERAL BAPTISTS, INC.  
d/b/a OAKLAND CITY UNIVERSITY,

*Petitioner,*

v.

UNITED STATES OF AMERICA ex rel.  
JEFFREY E. MAIN,

*Respondent*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI  
WITH APPENDIX

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## QUESTION PRESENTED

The District Court dismissed relator's claim under the False Claims Act ("FCA"), 37 U.S.C. 3729 (2000), *et seq.*, finding that an uncertified statement by Petitioner, a university participating in the federal student aid program under the Higher Education Act of 1965 ("HEA"), in its Program Participation Agreement ("PPA") with the United States Department of Education ("ED") could not be the basis of FCA liability because the PPA is not a claim for federal funds. On appeal, a panel of the Seventh Circuit reversed, finding, in conflict with decisions of the Second, Fourth, Fifth, Ninth, and District of Columbia Circuit Courts of Appeal, that uncertified statements made in a federal program participation agreement may constitute false statements under the FCA. The Seventh Circuit's decision also directly conflicts with a decision of the Fifth Circuit which, on substantially identical facts, held that a statement in the PPA could not be used to support FCA liability against a university.

A single question is presented for review:

1. Whether an institution's statement that it will comply with general regulatory conditions, made in an agreement to participate in a federal program, may constitute a false statement under the False Claims Act, even where the statement is uncertified and is not a condition of payment under the program.

## LIST OF PARTIES

The parties named in the caption are the only parties to this proceeding. The Department of Justice declined to intervene before the district court, but filed a Statement of Interest before the district court and appeared as *amicus curie* before the court of appeals. This petition is timely filed on February 15, 2006.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel states that Petitioner Oakland City University ("OCU"), founded by General Baptists, Incorporated, d/b/a Oakland City University has no parent company, and no publicly held company owns 10% or more of its stock.

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## OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 426 F.3d 914 (7th Cir. 2005). (Reproduced at App. 1a.) The court of appeals denied OCU's Petition for Panel Rehearing with Suggestion for Rehearing *En Banc* on November 17, 2005 in an unreported decision. (Reproduced at App. 25a.) The opinion of the United States District Court for the Southern District of Indiana granting OCU's motion to dismiss is unreported. (Reproduced at App. 9a.)

## STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (2000). The district court had jurisdiction over relator's claim pursuant to 31 U.S.C. § 3730(b) (2000). The court of appeals had jurisdiction to review the final judgment of the district court pursuant to 28 U.S.C. § 1291 (2000). The court of appeals filed its opinion on October 10, 2005. It denied OCU's timely petition for panel rehearing or rehearing en banc on November 17, 2005.

## STATUTORY AND REGULATORY PROVISIONS

Attached as appendices:

20 U.S.C. § 1001-1003	(at App. 25a-40a)
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## STATEMENT OF THE CASE

Oakland City University (“OCU”) is a private, non-profit institution of higher education founded in 1885 by the General Association of General Baptists. OCU is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, the Association of Theological Schools and the National Council for Accreditation of Teacher Education. While the University enrolls significant numbers of traditional undergraduate students, it also focuses on serving qualified students from low income families and adults for whom higher education is not always accessible. OCU is a participant in federal student aid programs under Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. § 1070 (2000) *et seq.*) (“HEA”).

Respondent Jeffrey Main (“Main”), a former OCU admissions representative, alleges that OCU paid its admissions staff commissions, bonuses, and other incentives based on their success in securing the enrollment of new students in violation of United States Department of Education (“ED”) regulations. Main seeks to benefit financially from this alleged regulatory violation by his filing of a *qui tam* action against OCU under the False Claim Act, 37 U.S.C. § 3729 (2000) (“FCA”). Although regulatory violations are not generally actionable under the FCA, Main